

LOCAL COMMENT: Salvaging CIA leak investigation

BY JOHN CONYERS JR.

January 6, 2004

When the Independent Counsel law expired in 1999, it was clear that we had a "Ken Starr" problem. A man with zero prosecutorial experience was charged with investigating President Bill Clinton even though he himself had irreconcilable conflicts of interests -- among other things, his law firm's involvement in the Paula Jones case, and his financial ties to Richard Mellon Scaife, the implacable political foe of Clinton.

Since Congress was unable to reach consensus on the appropriate safeguards to build into the Independent Counsel law, it was permitted to expire. However, the Justice Department quickly issued regulations ensuring that the attorney general would be able to appoint "special counsels" -- outside individuals with a "reputation for integrity" -- when the investigation presented a conflict of interest for the department.

By failing to appoint a single special counsel during his tenure, Attorney General John Ashcroft has permitted a pendulum to swing too far in the other direction, and we now have an administration that is unwilling to permit any meaningful independent review of allegations of misconduct against it and its friends.

That shortsighted view has now reached its logical conclusion in the department's investigation of the leaking of a CIA operative's identity. Here we have a case where the attorney general was investigating the very White House responsible for the resuscitation of his political career. In addition, the investigation involves the political Svengali, Karl Rove, who was inextricably tied to the attorney general by virtue of receiving a staggering \$746,000 for consulting on his past Senate and governor's races.

It's difficult to conceive of a more blatant conflict of interest.

The attorney general's recusal and delegation of authority to U.S. Attorney Patrick Fitzgerald does not solve this problem or right this wrong by any stretch of the imagination.

First off, the three-month delay before Ashcroft removed himself has already done severe damage to the credibility of the case. Leak investigations must move quickly before the trail becomes "old and cold." Yet at the outset of the case, the White House was inexplicably given a one-half day heads-up before the investigation officially commenced. During the crucial initial stages of the investigation, FBI officials admitted they moved a "bit slower" because "this will get scrutinized at our headquarters and at Justice in a way that lesser, routine investigations wouldn't."

Who knows what documents and phone logs disappeared while the investigation was delayed or which recollections faded while the FBI dragged its feet as the attorney general headed the case?

In addition, by failing to appoint an outside individual with no ties to the department or loyalty to the administration, the public can have little faith the investigation will be pursued diligently and impartially. Fitzgerald may be a fine prosecutor, but at the end of the day he still owes his job to President George W. Bush. If it turns out the White House engaged in an organized smear campaign against former Ambassador Joseph

Wilson -- including outing his wife -- to exact revenge for pointing out the lies in the pre-war Iraq intelligence, this would do incalculable harm to the president's credibility and the case for his re-election. That is why I am not surprised that White House officials recently admitted their goal was to "let the earth-movers roll in on this one" and that on the heels of Ashcroft's announcement, Republican legal sources acknowledged that the recusal will have the effect of providing political cover for the administration if no indictment is issued.

Moreover, the recent assignment to Fitzgerald contains none of the safeguards against politicization that come with the formal appointment of a special counsel. He doesn't have the ability to seek whatever financial resources are needed to pursue the case as a special counsel is able to. Fitzgerald does not have the guarantee that he can be fired only for misconduct, dereliction of duty, incapacity or other good cause as is the case with a special counsel. And there is no requirement that the attorney general provide the public with a written explanation of why any action proposed by the prosecutor was not taken, as is specified in the special counsel regulations.

Whether the Justice Department was investigating the president's good friend Ken Lay or former Army Secretary Thomas White in the Enron scandal, Vice President Dick Cheney in the Halliburton accounting case, or top Republican legislators implicated in the Westar scandal, John Ashcroft has yet to find a case that warrants any semblance of an independent investigation.

Certainly, Ken Starr taught us that the Independent Counsel law was subject to abuse. But by failing to appoint even the far tamer special counsel that has replaced it, the attorney general has created a far more serious problem -- an administration that can flout the law and face little prospect of independent scrutiny.

U.S. REP. JOHN CONYERS JR., D-Detroit, who represents the 14th District, is ranking member of the House Judiciary Committee. Write to him at 2426 Rayburn House Office Building, Washington, DC 20515.

Copyright © 2004 Detroit Free Press Inc.